



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Nova Biomedical--Reconsideration

**File:** B-258715.2

**Date:** June 19, 1995

### DECISION

Nova Biomedical requests reconsideration of our November 18, 1994, decision dismissing its protest against the terms of solicitation No. M6Q-24-94, issued by the Department of Veterans Affairs (VA) for the acquisition of portable chemical analyzers and associated equipment to be used as part of a mobile laboratory.

We deny the request for reconsideration.

The offer that Nova submitted in response to the protested solicitation was not low and there was no evidence that the allegedly restrictive specifications challenged in the protest prevented Nova from submitting a more favorable price than it did. Since Nova would not have been in line for award even if we had sustained its protest against the rejection of that offer, we dismissed the protest. See American Combustion, Inc., B-235397.2, Oct. 13, 1989, 89-2 CPD ¶ 348. In requesting reconsideration of our dismissal, Nova first argues that American Combustion, Inc. is inconsistent with other decisions, such as M. C. & D. Capital Corp., B-225830, July 10, 1987, 87-2 CPD ¶ 32, holding that a protester need not submit a bid under a challenged solicitation in order to protest the restrictiveness of that solicitation's specifications where the protester states that it would submit a bid if the specification were amended. Nova essentially asserts that it is inconsistent to dismiss protests by firms that submit bids or offers that are not low while allowing protests by firms that do not respond to the solicitation.

The two cases are readily distinguishable. Where, as here, a protester submits an offer despite its challenge to solicitation provisions, the offered price is not low, and it appears that the protested provisions did not have a material impact on the protester's price, the protester cannot be said to have been prejudiced by the challenged provisions. See American Combustion, Inc., *supra*. Where a protester does not submit an offer, however, the impact of the protested provisions is not evident from the record, and we therefore resolve doubts concerning their prejudicial

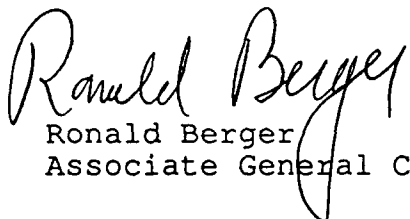
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effect in favor of the protester. See Moon Eng'g Co., Inc.--Recon., B-251698.6, Oct. 19, 1993, 93-2 CPD ¶ 233; M. C. & D. Capital Corp., supra. Accordingly, we do not agree that our cases in this area are inconsistent.

Nova also disputes the conclusion, stated in our prior decision, that there was no basis for finding that the protested specifications prevented Nova from submitting a lower price. Nova contends that if the VA had issued reasonable functional specifications, instead of brand-name-or-equal specifications, the protester would have offered its Nova Stat Profile 9, combining the functional characteristics of the i-Stat Corporation analyzer, the brand name product listed in solicitation No. M6Q-24-94, with those of the Mallinckrodt Gem Premier blood gas analyzer, listed in solicitation No. M6Q-26-94. The Nova Stat Profile 9, the protester contends, could have been offered at a price substantially less than the combined prices at which the VA made award under solicitation Nos. M6Q-24-94 and M6Q-26-94.

The matter is now academic. The VA's procurement approach is to purchase, through separate solicitations, elements of a mobile laboratory. Nova previously protested this approach, making the same arguments that it made here--that the agency failed to determine its need for a mobile laboratory, to describe its needs in functional terms, or to conduct a proper market survey--in connection with solicitation No. M6Q-26-94. We denied the protest in our decision Coulter Corp.; Nova Biomedical; Ciba Corning Diagnostics Corp., B-258713; B-258714, Feb. 13, 1995, 95-1 CPD ¶ 70. That being so, even if we were to agree that Nova should be considered an interested party, the basic matter under protest--the procurement approach used by the VA and the implementing specifications--has already been decided in favor of the agency. Thus, there is no reason for us to review this matter further.

The request for reconsideration is denied.

  
Ronald Berger  
Associate General Counsel